IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

WP(C).No. 32959 of 2004(W)

PETITIONER:

K.K. RAGHAVAN, KOMALASADANAM, AVARMA,
PERUMBADAVAM P.O., KOTTAYAM DISTRICT.
(PART-TIME SWEEPER (RETD.) KRISHI BHAVAN,
MULAKULAM.

BY ADV. SMT.NISHA JOHN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, THIRUVANANTHAPURAM.

2. PRINCIPAL AGRICULTURAL OFFICER,
KOTTAYAM.

3. AGRICULTURAL OFFICER,
KRISHIBHAVAN, MULAKULAM.

4. THE SUB TREASURY OFFICER,
KADATHURUTHY.

5. THE ACCOUNTANT GENERAL (A & E),
THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.32959 of 2004 W

Dated this the 30th day of November, 2007.

JUDGMENT

The petitioner is a retired Part-time Sweeper. He retired on 31.8.2002, after completing 20 years of continuous service. He was aged 70 years at the time of retirement. An amount of Rs.21,420/- was sanctioned to him as gratuity by the Accountant General as per Exts.P1 and P1(a). But subsequently, the petitioner was served with Exts.P2 and P2(a), the liability certificate and a covering letter stating that a sum of Rs.44,745/- is due from the petitioner by way of liability. The petitioner has challenged Ext.P2 and has sought for a direction for disbursal of the amount as per Exts.P1 and P1(a).

2. The liability fixed as per Ext.P2 is sought to be justified in the counter affidavit filed by the 2nd respondent. It is stated therein that the petitioner entered service on 20.6.1975 as a part-time sweeper. He was paid a remuneration at the rate of Rs.25/- per month for a sweeping area below 200 Sq.m. He was absorbed in the post of Part-time Sweeper with effect from 16.8.1982 and therefore, his pay and

allowances were fixed as per the orders admissible to Part-Time Contingent Employees from time to time.

3. It is further contended that at the time when the pay revision of the contingent employees was effected, it was to be fixed at Rs.95/- + DA as per G.O.(P)No.831/80/(253)/Fin dated 3.11.1980. But, petitioner's pay was fixed at Rs.140/- erroneously. This was continued at the stage of the next revision and his pay was revised to Rs.283/- instead of Rs.225/-. A tabular statement is given in page 3 of the counter affidavit. It seems that this error in the fixation of the petitioner's pay apparently was noticed only after his retirement and therefore, the entire amount, which is stated to have been paid in excess to him, was sought to be fastened on him as his liability and this was done as per Ext.P2.

4. On a reading of the counter affidavit, I am of the view that apparently the petitioner was not responsible for the fixation of the pay because all that he had claimed was the wages applicable to the contingent staff. One cannot forget the fact that the petitioner was a barely literate man and would have been interested only in maintaining his job. There is nothing in the counter affidavit to show that the petitioner had, in any manner, contributed to the

erroneous fixation of his pay. Apparently, an error in the fixation of the pay at the time of absorption in the contingent service was carried over during the subsequent revisions. It is difficult to hold that the petitioner was, in any manner, responsible for the same.

5. Learned counsel for the petitioner relies on the decision of the Supreme court reported in **Aleyamma Varghese v. Secretary General Education {2007 (3) KLT 700}.** While holding that a mistake apparent on the face of the record may be rectified, the Supreme Court observed that the State should react more magnanimously and not resort to recovery proceedings after a period of 17 years. The principle underlying the direction issued by the Supreme Court should be adopted in the present case also. As mentioned above, the petitioner is a barely literate man, who was working as a part-time sweeper and his wages were fixed on a formula depending upon the sweeping area. Assuming that there was an error in fixing his pay, there was nothing to show that the petitioner had contributed to the same. In such circumstances, the fixation of liability as per Ext.P2 cannot be sustained.

In the result, Ext.P2 is set aside. The writ petition is allowed. The first respondent is directed to take appropriate steps to disburse the amount due to the petitioner by way of Death cum Retirement Gratuity sanctioned as per Exts.P1 and P1(a) within one month from the date of receipt of a copy of this judgment.

Sd/-
(V.GIRI)
JUDGE

sk/

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P.S. To Judge